



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 223

[Docket DARS-2020-0045]

RIN 0750-AL17

Defense Federal Acquisition Regulation Supplement: Authorities for Minimizing the Use of Materials Containing Hexavalent Chromium (DFARS Case 2020-D031)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove references to revoked Executive orders related to minimizing the use of materials containing hexavalent chromium.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 571-372-6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove references to Executive Order (E.O.) 13423, Strengthening Federal Environmental, Energy, and Transportation Management, and E.O. 13514, Federal Leadership in Environmental, Energy, and Economic Performance,

as the authorities for the policy at DFARS subpart 223.73, Minimizing the Use of Materials Containing Hexavalent Chromium. Both E.O. 13423 and E.O. 13514 were revoked by E.O. 13693, Planning for Federal Sustainability in the Next Decade, which was later revoked by E.O. 13834, Efficient Federal Operations (83 FR 23771, May 22, 2018). E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (86 FR 7037, January 25, 2021), partially revoked E.O. 13834, resulting in no impact to this final rule.

The removal of these references will not impact DoD's policies and procedures for minimizing the use of hexavalent chromium, a known carcinogen, still used in some DoD weapon systems and platforms due to its corrosion protection properties.

DoD published a proposed rule in the **Federal Register** at 85 FR 74639 on November 23, 2020.

One respondent submitted a comment about a grant, which is out of the scope of this rule. No changes were made in the final rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This final rule does not create any new solicitation provisions or contract clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the simplified

acquisition threshold, or for commercial items, including commercially available off-the-shelf items.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

IV. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs in the Office of Management

and Budget has determined that this rule is not a major rule as defined by 5 U.S.C. 804(2).

V. Regulatory Flexibility Act

DoD has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule amends the DFARS to remove references to Executive Order (E.O.) 13423, Strengthening Federal Environmental, Energy, and Transportation Management; and E.O. 13514, Federal Leadership in Environmental, Energy, and Economic Performance, which were revoked by E.O. 13693, Planning for Federal Sustainability in the Next Decade. E.O. 13693 was later revoked by E.O. 13834, Efficient Federal Operations (83 FR 23771, May 22, 2018). E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (86 FR 7037, January 25, 2021), partially revoked E.O. 13834 resulting in no impact to this final rule. The objective of the case is to remove two revoked E.O.s while maintaining current DoD policies and procedures for minimizing the use of materials containing hexavalent chromium.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

This rule is not expected to affect significant numbers of small business concerns because the requirements and contract clause remain unchanged. This rule will maintain the status quo. Data generated from the Electronic Data Access System for

fiscal years 2017 through 2019, indicates that DoD has awarded an average of 70,470 contracts containing DFARS clause 252.223-7008, Prohibition of Hexavalent Chromium, to approximately 10,868 unique small entities during the three year period. It is assumed that there will be some impact to unique small entities that are new to DoD contracting, however, the impact will most likely be negligible because national and international restrictions have been in place for several years.

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

There are no practical alternatives that will accomplish the objective of this rule.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 223

Government procurement.

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR 223 is amended as follows:

**PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE
ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE
WORKPLACE**

1. The authority citation for 48 CFR part 223 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Revise section 223.7301 to read as follows:

223.7301 Policy.

In accordance with the DoD policy memorandum of April 8, 2009, Minimizing the Use of Hexavalent Chromium, it is DoD policy to minimize hexavalent chromium (an anti-corrosive) in items acquired by DoD (deliverables and construction material), due to the serious human health and environmental risks related to its use.

223.7302 [Removed and Reserved]

3. Remove and reserve section 223.7302.